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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,478	12/21/2001	James B. Melesky	13811	4450

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EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application N .

10/024,478

Applicant(s)

MELESKY, JAMES B.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 7, 14, 16, 17, 20-22, 24, 25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 7, 14, 16, 17, 20-22, 24, 25, 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Objections

1. Claim 21 is objected to because of the following informalities: line 2 “ at last” is confusing. Should it be “ at least”?

Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Machledt (6006944).

Machledt shows an insulating cover (12) comprises a closure member of a free standing insulating material and including a body portion (36) and opposing side and end walls, the closure member including a depending central body portion of a size to complementary fit within the frame (22) defining the access opening, the depending central body portion (36) having an outer peripheral surface (the edge surface) which frictionally engages the frame defining a continuous first seal about the access opening when the closure member is positioned in covering relationship with respect to the access opening, the closure member including laterally extending outer flange portions (40) for seating against an upper edge defined by the frame defining the access opening to thereby form a second seal with the frame.

The insulating cover inherently could be adapted to fit within and snugly engages an opening/frame structure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926).

Waters et al shows an insulating cover comprising a closure member (28) formed of a free standing insulating material and including a body portion and opposing side and end walls.

Waters et al does not show the body portion having a depending central body portion of a size to complementary fit within the frame defining the access opening, the body portion having an outer peripheral surface which frictionally engages the frame defining the access opening to thereby create a continuous first seal about the access opening when positioned in covering relationship with respect to the access opening.

Brush Jr. et al shows a body portion having a depending central body portion (12) of a size to complementary fit within the frame (41, 38) defining an access opening, the body portion having an outer peripheral surface which frictionally engages the frame defining the access opening to thereby create a continuous first seal about the access opening when positioned in covering relationship with respect to the access opening to enable the secured sealing of the interior of the access opening from the outside.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al to show the body portion having a depending central body

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portion of a size to complementary fit within the frame defining the access opening, the body portion having an outer peripheral surface which frictionally engages the frame defining the access opening to thereby create a continuous first seal about the access opening when positioned in covering relationship with respect to the access opening because it would enable the secure sealing of the interior of the access opening from the outside as taught by Brush Jr. et al.

Waters et al as modified by Brush jr. et al shows the closure member having laterally extending outer flange portions for seating against an upper edge defined by the frame defining the access opening to thereby form a second seal with the frame.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 2 above, and further in view of Daw et al (4832153).

Waters et al as modified shows all the claimed limitations except for the closure member being coated with a fire retardant material.

Daw et al discloses a closure member being coated with a fire retardant material (col 2 lines 47) to ensure safety against fire.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member being coated with a fire retardant material because it would protect the closure from fire as taught by Daw et al.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 2 above, and further in view of Anghinetti et al (3896595).

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Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle secured to the depending central body portion to facilitate maneuvering.

Anghinetti et al discloses a handle (38) secured to the depending central body portion (18) to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle secured to the depending central body portion to facilitate maneuvering because it would enable easy maneuvering of the closure member as taught by Anghinetti et al.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 2 above, and further in view of Fuller (4281743) and Porter (5628158).

Waters et al as modified shows all the claimed limitations except for the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for adhesively securing the opposing edges in inter-fitted relationship.

Fuller shows the closure member including at least first and second components (52, 53a, 53b, 52, figure 2) each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for securing the opposing edges in inter-fitted relationship.

Porter discloses adhesive means joining panel edges together.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween as taught by Fuller, and means for adhesively securing the opposing edges in inter-fitted relationship because having the closure member made of multiple components would opposing edges engaged one another to create tortuous seal path therebetween would enable the creation of a large closure member from smaller pieces and thus resulting in ease of manufacturing and transport, and having the edges of the components joined adhesively would ensure the proper securing of the components together at assembly as taught by Porter.

8. Claims 14, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926).

Waters et al shows an insulating cover comprising a continuous frame (26, 20, 24, 22) having spaced side walls and spaced end walls and which frame is formed of a free standing insulating material, the frame defining an opening therethrough for alignment with the access opening and the frame being of a size to generally surround the access opening, a closure member (28) formed of a free standing insulating material and having side and end walls, the closure member, the insulating material of the closure member being an expanded polymeric material (col 2 line 40).

Waters et al does not show the closure member being complementary to and snugly seats within the frame to create a first continuous seal within the frame when positioned within the frame in covering relationship with respect to the access opening defined by the frame, the

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closure member including flange portions which extend laterally outwardly relative to the depending central portion for seating against upper surfaces of the side and end walls of the frame to thereby form a second continuous seal with the frame.

Brush Jr. et al shows a closure member having a body portion having a depending central body portion (12) of a size to complementary fit within the frame (41, 38) defining an access opening to thereby create a continuous first seal within the frame when positioned within the frame in covering relationship with respect to the access opening defined by the frame to enable the secured sealing of the interior of the access opening from the outside.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al to show the closure member being complementary to and snugly seats within the frame to create a first continuous seal within the frame when positioned in covering relationship with respect to the access opening defined by the frame because it would enable the secure sealing of the interior of the access opening from the outside as taught by Brush Jr. et al.

Waters et al as modified by Brush jr. et al shows the closure member including flange portions which extend laterally outwardly relative to the depending central portion for seating against upper surfaces of the side and end walls of the frame to thereby form a second continuous seal with the frame.

9. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926) as applied to claim 14 above and further in view of Fier (4302126).

Waters et al as modified shows all the claimed limitations except for the side and end walls of the closure member being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame are tapered inwardly from an upper surface toward a lower surface of the side and end walls thereof such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame.

Fier (figure 9) shows a closure (49) having ends and side walls (the four quadrants of the diameter) being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame (40) being tapered inwardly from an upper surface toward a lower surface of the side and end walls (the four quadrants of the diameter) such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modifies structure to show the side and end walls of the closure member being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame are tapered inwardly from an upper surface toward a lower surface of the side and end walls thereof such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame as taught by Fier because having tapering mating surfaces at joints would ensure a tight fit for the mating parts without resorting to tight manufacturing tolerance and thus resulting in cost saving.

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10. Claims 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926) as applied to claim 14 above and further in view of Sciambi et al(4591022).

Waters et al as modified shows all the claimed limitations except for the frame including a generally continuous depending portion extending from each of the side and end walls, the generally continuous depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame defining the access opening.

Sciambi et al (figures 1-2) shows the frame (196) including a depending portion (50) extending from each of the side and end walls, the depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame (26, 22) defining the access opening to enable the easy fastening of the frame to a structural frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the frame including a generally continuous depending portion extending from each of the side and end walls, the generally continuous depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame defining the access opening because it would enable easy secure fastening of the frame to a structural frame as taught by Sciambi et al.

Per claim 20, Waters et al as modified shows the frame including an upper section (the bottom section of 20), which extends laterally outwardly about the generally continuous depending portion thereof so as to be seated above the frame defining the access opening.

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11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al and Sciambi et al as applied to claim 20 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central

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portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Fuller (4281743) and Porter (5628158).

Waters et al as modified shows all the claimed limitations except for the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for adhesively securing the opposing edges in inter-fitted relationship so as to form a unified closure member.

Fuller shows the closure member including at least first and second components (52, 53a, 53b, 52, figure 2) each having opposing edges which are configured to cooperatively engage one

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another to create a tortuous seal path therebetween, and means for securing the opposing edges in inter-fitted relationship to form a unified closure member.

Porter discloses adhesive means joining panel edges together.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween as taught by Fuller, and means for adhesively securing the opposing edges in inter-fitted relationship to form a unified closure member because having the closure member made of multiple components would opposing edges engaged one another to create tortuous seal path therebetween would enable the creation of a large closure member from smaller pieces and thus resulting in ease of manufacturing and transport, and having the edges of the components joined adhesively would ensure the proper securing of the components together at assembly as taught by Porter.

14. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Daw et al (4832153).

Waters et al as modified shows all the claimed limitations except for the closure member being coated with a fire retardant material.

Daw et al discloses a closure member being coated with a fire retardant material (col 2 lines 47) to ensure safety against fire.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member being coated

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with a fire retardant material because it would protect the closure from fire as taught by Daw et al.

Response to Arguments

15. Applicant's arguments with respect to claims 2-4, 7, 14, 16-17, 20-22, 24-25, 27 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument to Machledt, examiner would like to point out that the claim is to the "insulating cover" only, and the reference meets the claimed limitations. The reference inherently also is capable of functioning as claimed. The argument is thus moot.

16. With respect to applicant's argument that Brush Jr. et al reference is non-analogous, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art reference is reasonably pertinent to the particular problem with which the applicant was concerned. The reference teaches a way to provide a secured covering to an opening and applicant was trying to solve the same issue. The argument is thus moot.

17. With respect to applicant's argument that the modification of Waters et al would not provide a seal to the structure as a seal would interfere with the pivoting ability of Waters et al, examiner respectfully points out that as modified, the reference has both sealing and pivoting abilities. It is thus an improvement and encouraged. The argument is thus moot.

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18. With respect to the staircase having little clearance and interferes with the depending central portion, examiner would like to point out that the clearance is sufficient to accommodate the depending central portion. The argument is thus moot.

19. With respect to applicant's argument to Fier, examiner respectfully points out the tapering structure of Fier enables the structure to securely seal and provide a good insulating surface. The argument is thus moot.

20. With respect to Sciambi et al, examiner would like to point out that the teachings of Sciambi et al disclose the claimed limitations to the frame including **generally** continuous depending portion. The structure is seated against the frame and thus provides a frictional seat against the frame. The argument is thus moot.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran

12/27/04